

**BEFORE THE  
COMMISSION ON LANDLORD TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Iris Beatrice Gomez

Complainant

V.

Kenneth A. Sprinkle

Respondent

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Case No. 31111

Rental Facility: 9810 Holmhurst Road, Bethesda, Maryland, 20817 (License Number 11672)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 15<sup>th</sup> day of June, 2010, found, determined, and ordered, as follows:

**BACKGROUND**

On September 8, 2009, Iris Beatriz Gomez, ("Complainant"), former tenant at 9810 Holmhurst Road, Bethesda, Maryland ("Property"), a licensed single-family rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which she alleged that her former landlord, Kenneth A. Sprinkle, owner of the Property ("Respondent"): (1) assessed unjust charges, in the amount of \$8,532.16, against her \$5,000.00 security deposit plus \$250.00 accrued interest after the termination of her tenancy, in violation of Section 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1954, 2003 Repl. Vol., 2007 Suppl. ("Real Property Article"); (2) without a reasonable basis, withheld her security deposit (\$5,000.00) plus accrued interest after the termination of her tenancy, in violation of Section 8-203(f)(1) of the Real Property Article; and (3) failed to refund any portion of her \$5,000.00 security deposit plus accrued interest within 45 days after the termination of her tenancy, in violation of Section 8-203 (e)(1) of the Real Property Article.

The Complainant asserts she did damage a portion of the hardwood floors with some of her flower pots. She also stated she corrected the damage to the carpeting caused by her dog by shampooing it before she left the Property.

In response to the Complainant's allegations, the Respondent asserts that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; (2) the costs he incurred to repair those damages exceeded the amount of the security deposit paid by the Complainant; and (3) he suffered a loss of one month's rent due to the uninhabitable and severely damaged condition of the Property; and (4) the repairs were completed and paid for within the 45 days after the Complainant vacated the Property.

The Complainant is seeking an Order from the Commission for the Respondent to refund her entire \$5,000.00 security deposit plus accrued interest in the amount of \$250.00, for a total award of \$5,250.00. The Complainant is also seeking a penalty of three (3) times the withheld amount as penalty, which amount is \$15,750.00.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on December 1, 2009, the Commission voted to hold a hearing which was originally scheduled for January 28, 2010. On January 25, 2010, the Complainant requested a postponement of the hearing. This request was granted by the Commission and the public hearing was rescheduled for April 13, 2010. The hearing in the matter of Iris Beatrice Gomez v. Kenneth A. Sprinkle was held on April 13, 2010.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Iris Beatrice Gomez, the Respondent, Kenneth A. Sprinkle, the Respondent's attorney, Alan B. Frankle, one witness for the Complainant, Mariella Young from Weichert Realtor, and Maria Edison, Investigator, Office of Landlord-Tenant Affairs for the Department. Laura Moya of the Department served as an interpreter for the Complainant.

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence, without objection, two exhibits offered by the Complainant: (1) correspondence dated April 30, 2009, to the Respondent, hand delivered to and signed for by the Respondent's wife, acknowledging receipt of the keys to the Property and requesting that she be present for the final walk-thru inspection at the end of the tenancy which was identified as Complainant's Exhibit No.1; and (2) page 3 of an unidentified document from the Complainant to the Respondent regarding damages to the Property identified as Complainant's Exhibit No. 2. The Commission also entered into evidence, without objection, 18 photographs offered by the Respondent's attorney, identified as Respondent's Exhibit Nos. 1 through 18.

The hearing adjourned on April 13, 2010 with the record remaining open for seven (7) days to allow the Respondent to provide a response to the three photographs referenced in items number 10 and 12 of Complainant's Exhibit No. 2. On April 20, 2010, the Respondent's attorney sent correspondence dated April 17, 2010, which indicated the three photographs referenced in items number 10 and 12 of Complainant's Exhibit No. 2 depicted damage that was not caused by the Complainant. This information was marked as Commission's Exhibit No. 2. The Complainant also submitted 22 pages of correspondence to the Chairperson to review. Because the record remained open for the purpose of permitting the Respondent to review specific items in Complainant's Exhibit No. 2 and for no other purposes; these additional materials provided by the Complainant were not entered into the record. Accordingly, the record for the hearing was closed on April 20, 2010.

### **FINDINGS OF FACT**

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On July 27, 2007, the Complainant signed a one-year lease agreement ("Lease") with the Respondent for the rental of the Property, which commenced on August 1, 2007, and expired on July 31, 2008, at a monthly rent of \$2,500.00.
2. At the commencement of her tenancy, the Complainant paid the Respondent's Agent a security deposit in the amount of \$5,000.00, which amount is properly receipted in the Lease;
3. The Complainant remained in the Property on a month to month basis, after the expiration of the initial lease.
4. By a letter dated March 31, 2009, the Complainant issued the Respondent a notice to vacate the Property, effective April 30, 2009.
5. By the same letter dated March 31, 2009, the Complainant requested to be present for the final walk-thru inspection of the Property.
6. The Commission finds credible the testimony of the Complainant that she went to the Respondent's house on April 30, 2009, with a copy of correspondence dated April 30, 2009, which reiterated her notice to vacate the Property on that date and requested that she be present for the final walk thru inspection. The Respondent's wife signed for the receipt of this correspondence and receipt of the keys to the Property.
7. The Commission finds credible the testimony of the Complainant that she did not provide a copy of her new address to the Respondent until April 30, 2009, the date she vacated.
8. The Commission finds that the Complainant did not send the Respondent, at least fifteen days prior to moving, a certified letter stating the date of moving and her new address per Paragraph 23- Move-Out Inspection/Surrender of Premises, of the Lease.
9. The Commission finds that the Complainant vacated the Property on April 30, 2009, having paid rent in full through that date.
10. The Commission finds credible the Respondent's testimony that on June 13, 2009, within 45 days after the termination of the Complainant's tenancy, he sent the Complainant, by certified mail, signed for by the Complainant, to her last known address, an itemized list of damages being assessed against her security deposit as follows:

Security deposit posted on 07/27/07	\$5,000.00
Interest earned at 3% per annum	<u>250.00</u>
	\$5,250.00

Minus:	Item	Actual Cost
	Replace hardwood and refinish hardwood floors	\$1,375.00
	Removal of trash/debris & maintenance items	\$ 500.00
	Replace sink drain poppers	\$ 150.00
	Repair damaged walls	\$1,100.00
	Repaint room with wall damage	\$1,000.00
	Replacement carpeting for family, recreation room & stairs	\$1,331.00
	Light bulbs, broken lens & supplies	\$ 34.32
	Cost of replacement door locks	\$ 74.03
	Repair front storm door (labor)*	\$ 0.00
	Repair screen door on rear door (labor)*	\$ 0.00
	Repair broken kitchen cabinet drawers (labor)*	\$ 0.00
	Clean stains on basement carpeting (labor)*	\$ 0.00
	Replace ceiling tiles in basement (labor)*	\$ 0.00
	Cost of ceiling tiles in basement	\$ 30.72
	Install door locks (labor)*	\$ 0.00
	Clear drain in upstairs bath	\$ 102.00
	Purchase and replace light bulbs (labor)*	\$ 0.00
	Repair damaged outside AC disconnect switch*	\$ 0.00
	Cost of new window locks	\$ 20.89
	Mileage	\$ 119.19
	Subtotal	\$5,837.16
	Lost Rent May 2009	\$2,695.00
	<b>Total</b>	<b>\$8,532.16</b>
	<b>Credits</b>	
	Deposit	\$5,000.00
	Interest	\$ 250.00
	<b>Total Credits</b>	<b>\$5, 250.00</b>
	<b>Net Due</b>	<b>(\$3,282.16)</b>

\* No charge

11. The Commission does not find credible the Complainant's testimony that the living room and bedroom floors were in a damaged condition when she moved in to the Property.

12. The Commission finds credible the Respondent's testimony that the hardwood floors were severely damaged throughout the Property at the termination of the Complainant's tenancy and that the Respondent incurred costs in the amount of \$1,375.00 to refinish those floors.

13. The Commission finds credible the Respondent's testimony concerning the condition of the rear of the Property at the termination of the Complainant's tenancy; the grass was not cut, the shrubbery was not trimmed; there was a temporary fence that had been

constructed by the Complainant; and trash was left behind, including a large grill, as evidenced by the photographs presented as Respondent's Exhibit.9-12, 15 and 16.

14. The Commission finds that the Complainant constructed a temporary fence, in violation of Paragraph 12- Alterations, of the Lease and the Respondent did incur a cost of \$225.00 to remove the fence at the termination of the Complainant's tenancy.

15. The Commission finds credible the testimony of the Respondent that he found three sink stoppers missing at the termination of the Complainant's tenancy and that he incurred a cost of \$150.00 to replace those stoppers.

16. The Commission finds credible the testimony of the Complainant that her dog caused the scratches on the bedroom door.

17. The Commission finds credible the Respondent's testimony that he had the Property painted prior to the commencement of the tenancy.

18. The Commission finds credible the testimony of the Respondent that most of the rooms in the Property had 30 or more nail holes, large indentations in the wall and pieces of glue from the floor to the ceiling in the small bedroom at the termination of the Complainant's tenancy, and that the Respondent incurred a cost of \$1,100.00 to repair the walls and \$1,000.00 to repaint the damaged walls.

19. The Commission finds credible the Respondent's testimony that he had the carpeting in the Property replaced prior to August 1, 2007, the commencement of the Complainant's tenancy and in accordance with Paragraph 41 of the lease agreement (Commission's Exhibit No. 1, page 11), which states:

Paragraph 41

"...Landlord will change existing carpet and install new ones before August 1,..."

20. The Commission finds credible the Respondent's testimony that the carpeting was badly soaked and stained with pet urine at the termination of the Complainant's tenancy and that the carpeting had to be replaced.

21. The Commission finds that the Respondent did incur costs for supplies needed to perform minor repairs in the Property at the termination of the Complainant's tenancy, including the replacement of door locks (\$74.03); replacement of ceiling tiles (\$30.72); replacement of missing light bulbs and a lens for the recreation room light (\$34.32).

22. The Commission finds credible the testimony of the Respondent that he had to hire a plumber to unclog the upstairs bathroom sink at the termination of the Complainant's tenancy.

23. The Commission finds credible the Respondent's testimony that the Property was not left in a clean, safe and sanitary condition on May 4, 2009, when he inspected the Property; however, that does not entitle him to charge the Complainant rent for May, 2009, since the tenancy terminated on April 30, 2010.

24. The Commission finds that the Respondent did send to the Complainant, via certified mail and signed for by the Complainant, at her last known address, within 45 days after the termination of her tenancy, an itemized list of damages being claimed against her security deposit together with a statement of the costs actually incurred to repair that damage.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Section 8-203(g)(1) and (2) of the Real Property Article states: "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f) (1) of this section together with a statement of the cost actually incurred, and "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission finds that the Respondent did send such a list to the Complainant within 45 days after her tenancy, in compliance with Section 8-203(g) (1) of the Real Property Article.

2. Section 8-203.1(a) (2) - Security deposit receipt of the Real Property Article states: "A receipt for a security deposit shall notify the tenant of the following:...(2) The right to be present when the landlord inspects the premises at the end of the tenancy in order to determine if any damage was done to the premises, if the tenant notifies the landlord by certified mail at least 15 days prior to the date of the tenant's intended move, of the tenant's intention to move, the date of moving, and the tenant's new address." This language is contained in Paragraph 23- Move-Out Inspection/Surrender of Premises, of the Lease. The Complainant did not send such a notice and the Commission concludes that the Respondent had no obligation to include the Complainant in the final walk through inspection.

3. Section 8-203(e)(1) and (2) of the Real Property Article states: "(1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 3 percent per annum, less any damages rightfully withheld. (2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded." The Commission concludes that the Respondent credited the Complainant's security deposit with the incorrect amount of simple interest. The correct amount of simple interest is calculated as follows:

$$\begin{array}{rcl}
 \$5,000.00 \times 3\% [\text{August 1, 2007-July 31, 2008}] & = & \$150.00 \\
 \$5,000.00 \times 1.5\% [\text{August 1, 2008-January 31, 2009}] & = & \$ 75.00 \\
 + \$5,000.00 \times 0\% [\text{February 1, 2009-April 30, 2009}] & = & \$ 0.00 \\
 \hline
 \text{TOTAL} & & \$225.00
 \end{array}$$

4. The Commission finds that Paragraph 9- Maintenance, of the Lease only requires the Complainant to water and maintain the lawn, so the \$50.00 for lawn service and \$75.00 for trash removal are legitimate costs incurred. However, the charges for trimming the bushes (\$50.00), removing sticks form the yard (\$25.00), removing ivy from around the house (\$50.00), and removing loose potting soil (\$25.00) are disallowed.

5. The Commission finds that the damage to the carpeting was extensive enough to warrant its replacement.

6. The Commission finds that the Respondent is entitled to the pro-rated cost for replacement of the carpet which amount is \$865.15 based on an average carpet life of five years, calculated as follows:

$$\$1,331.00 \text{ (cost of new carpet)}/60 \text{ months} = 22.18 \text{ (monthly cost)} \times 39 \text{ (remaining life of carpet in months)} = \$865.15$$

7. The Commission finds credible the testimony of the Complainant's witness, Mariella Young that the Respondent provided her with keys to the Property at the beginning of the tenancy to be given to the Complainant, but he did not provide keys for the window locks. Therefore, the charge of \$20.89 to replace the window locks is disallowed.

8. The Commission finds that the \$119.00 the Respondent spent in gas and mileage to perform the repairs to the Property, after termination of the Complainant's tenancy, is considered a normal cost of doing business and can not be assessed against the Complainant's security deposit.

9. The Respondent did not credit the Complainant's security deposit with the correct amount of simple interest (\$250.00) which had accrued on her \$5,000.00 security deposit. This amount should have been \$225.00.

10. The Commission concludes that the Respondent did incur costs of \$5,081.22 to repair damage to the Property in excess of normal wear and tear after the termination of the Complainant's tenancy as follows:

\$1,375.00	Repair hardwood floors
\$ 350.00	Lawn service/trash removal/fence removal
\$ 150.00	Replace missing drain stoppers in bathrooms
\$1,100.00	Repair damaged walls
\$1,000.00	Repaint damaged walls
\$ 865.15	Carpet replacement (pro-rated)
\$ 34.32	Light bulbs, broken lens and supplies
\$ 74.03	Replacement locksets
\$ 30.72	Replacement ceiling tiles
\$ 102.00	<u>Clearing bathroom drain</u>
\$5,081.22	TOTAL Rightfully Withheld

11. Section 8-203(f) (1) (i) of the Real Property Article states: "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord." The Commission concludes that the Respondent was not entitled to charge the Complainant for his personal expenses which totaled \$119.00 as they did not fall within the guidelines outlined by the Real Property Article and was deemed costs incurred in the

regular process of conducting the business of re-renting Property. Therefore, the Respondent's charge of \$119.00 is disallowed.

12. Although Section 8-203(f) (1) (i) of the Real Property Article allows the landlord to deduct unpaid rent from the security deposit, it does not apply in this instance. The Complainant was a month-to-month tenant who gave the Respondent, on March 31, 2009, proper notice of her intention to vacate on April 30, 2009. The Complainant did vacate on April 30, 2009, having paid rent in full through that date at which point no further rent was due. Therefore, the Respondent's charge of \$2,635 for May rent is disallowed.

13. Although the Commission concludes that the Respondent's withholding of the Complainant's entire security deposit was not allowed, in order to award a penalty as requested by the Complainant, pursuant to Section 29-47(b) (3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding all or part of the Complainant's security deposit and whether or not the Respondent acted in bad faith. The Commission finds that the Respondent was in compliance with the 45 day limit to send the itemized list as required by the Real Property Article, and that the Complainant did damage the Property in excess of normal wear and tear. The Commission concludes that the Respondent's actions were not egregious or in bad faith, and therefore, the Complainant's request for a penalty of up to three times the withheld amount is hereby DENIED.

### **ORDER**

The Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$143.78**, which sum represents the Complainant's security deposit (\$5,000.00) plus accrued interest (\$225.00) less costs rightfully withheld (\$5,081.22)

Commissioners Laura Murray, Luther Hinsley and Katia Cervoni, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent Kenneth A. Sprinkle, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4<sup>th</sup> Floor, Rockville, MD, 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Iris Beatrice Gomez, in the amount of \$143.78.

The Respondent, Kenneth A. Sprinkle, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.



Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent chooses to appeal the Commission's Order; he must post a bond with the Circuit Court in the amount of the award (\$143.78) if he seeks a stay of enforcement of this Order.

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Katia Cervoni, Panel Chairperson  
Commission on Landlord-Tenant Affairs